

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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In the Matter of	)	
	)	
Application of Verizon Delaware, Inc.	)	
Bell Atlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	WC Docket No. 02-157
Distance Company (d/b/a Verizon Enterprise	)	
Solutions), Verizon Global Networks, Inc. and	)	
Verizon Select Services, Inc., for Authorization	)	
To Provide In-Region InterLata Services	)	
In Delaware	)	

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**Comments of  
Cavalier Telephone Mid-Atlantic, LLC**

In accordance with the Commission's June 27, 2002 Public Notice, Cavalier Telephone Mid-Atlantic, LLC ("Cavalier") submits these comments in opposition to Verizon Delaware, Inc.'s ("Verizon's") application for authority to provide in-region InterLata services to customers in Delaware.

**1. Introduction**

Cavalier is the only facilities-based LEC in Delaware that provides residential customers a choice through the use of Verizon's UNE loops. When Cavalier built its network in Delaware it made the investment to build out its own fiber optic transport facilities to interconnect with multiple Verizon end offices in Delaware, where Cavalier physically collocated with Verizon.<sup>1</sup> At Verizon's request, Cavalier constructed more

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<sup>1</sup> Conectiv Communications, Inc. provided the initial interconnection arrangements and construction of the network in Delaware. Cavalier became a successor in interest to Conectiv as a result of an acquisition

than a hundred one-way incoming DS1 trunks for the use of Verizon to transport Verizon originated traffic back to Cavalier's switch for ultimate termination to Cavalier customers in Delaware.

The use of Cavalier's transport facilities alleviates the need for Verizon to route this traffic over its own network, through its existing tandem switch servicing Delaware customers. In other words, this arrangement provides a benefit to Verizon.<sup>2</sup> Once Cavalier accommodated Verizon's network needs and constructed such a network in Delaware, Verizon willingly paid for this transport functionality for more than a year, in the same and reciprocal manner that Cavalier pays for the use of Verizon's network functionality when the traffic is handed off in the other direction. Cavalier, accordingly, came to rely on this compensation for the growth needs of the company and as the basis for its plans to expand its service offerings to consumers in Delaware. However, after a year, Verizon arbitrarily stopped paying Cavalier, and has, for more than two years, refused to pay Cavalier anything for this service, while continuing to bill Cavalier for the same network services in reverse.

Cavalier has challenged Verizon's arbitrary declaration that it may use Cavalier's facilities to transport Verizon traffic for free, and the dispute is pending with the Delaware Public Service Commission.<sup>3</sup> However, it is important to note at the outset that this dispute is vastly different than the single IP/POI matter that was at the heart of the

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of Conectiv's communications business in Delaware by an asset sale in late 2001. All references to Conectiv are therefore intended to apply to Cavalier in these comments.

<sup>2</sup> Of course Cavalier is benefited as well, since it owns and controls a bigger piece of the network servicing its customers in Delaware.

<sup>3</sup> Delaware PSC Complaint No. 320-02.

review of this issue in the Pennsylvania 271 proceeding, upon which Verizon is expected to place much reliance.<sup>4</sup> Moreover, Cavalier's GRIPs dispute with Verizon in Delaware is not so easily dismissed as merely a private dispute between carriers unrelated to the scope of review under Section 271. At this time, while Cavalier's dispute over payment is handled in a separate case, any new network trunk activation designed to handle current needs is at a standstill. Cavalier will not engineer, nor will Cavalier install, any new incoming trunks to accommodate Verizon's needs to up-grade and improve the capability of Verizon's network to accommodate growth in Delaware, without some assurance that Verizon will compensate Cavalier for this network functionality.

Cavalier will not construct new network transport facilities for Verizon for free, while at the same time Verizon insists that Cavalier must pay for the use of Verizon's facilities when transporting Cavalier's traffic. This problem is not, as Verizon insists, merely a private contract dispute disassociated with this Section 271 review. On the contrary, Verizon's illegal GRIPs position, as applied in practice to the only existing UNE loop facilities-based provider in Delaware, threatens the current market-opening obligations required under Checklist One ("Interconnection") of this Section 271 review. Verizon's GRIPS position will wreak further havoc over current efforts to modernize the interconnected networks of Cavalier and Verizon in Delaware, and Verizon's GRIPs position will further be used as a bar to new interconnection arrangements with other

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<sup>4</sup> As Cavalier understands it, in Pennsylvania, several IXCs challenged Verizon's refusal to construct and pay for transport to a remote single interconnection point located out of the local calling areas to the customers that would be ultimately served. Cavalier, on the other hand, has built its network to physically interconnect with Verizon at numerous Verizon end offices within the geographically relevant local calling areas.

competitors, further eroding the ability of CLECs to offer competitive choice to customers in Delaware.

As for network improvements, Verizon has indicated to CLECs that it would like to upgrade its network to alleviate burdening its current tandem switch that serves LATA 228 Delaware customers, located at Market Street in Philadelphia. Verizon is planning to open a new tandem switch at Tatnall Street, in Wilmington, Delaware, for purposes of serving Delaware customers who are currently serviced out of the Market Street, Philadelphia tandem. With the new Tatnall Street tandem in place, Verizon intends to redeploy Delaware traffic from the Market Street tandem to the Tatnall Street tandem. Verizon has requested that Cavalier provide new DS1 incoming trunks to transport Verizon's traffic from the new Tatnall Street tandem to Cavalier's switch in Newark Delaware.

However, given the challenges to Verizon's GRIPs position there is no current contractual foundation for Cavalier and Verizon to interconnect with one another for future network architecture purposes. Cavalier will not install trunking over its facilities for the benefit of Verizon without just compensation. Without new intercompany trunks to interconnect the two LECs the networks are at a standstill and cannot be improved to accommodate the needs of customers in Delaware. Verizon will surely attempt to portray any problems this may cause to Delaware customers as "caused" by Cavalier but Cavalier will not be bullied into providing any more free services to Verizon. Verizon has choices; it may self-provision for its own transport needs, or it may purchase transport from another carrier. The "choice" to use Cavalier's facilities for free is not an option available any more to Verizon, and if that causes disruptions to Verizon's plans to grow

out of an overburdened existing tandem switch serving Delaware customers, then so be it. Delaware customers, meanwhile, are held hostage to the benefits that further competitive growth may provide, in the form of choice, lower prices, better quality of services. In short, under such a discriminatory regime, no CLEC, including Cavalier, would be willing to grow a facilities based network in Delaware if it cannot obtain basic compensation for the use of its network by Verizon.

Thus, the fact that Cavalier has a pending complaint against Verizon does not resolve the problem, under checklist item one of Section 271. The question for the FCC now is whether Verizon's request that Cavalier install new one-way direct trunking for the free use by Verizon is in compliance with its interconnection and reciprocal compensation obligations under the checklist review in this Section 271 matter.

Further, Cavalier's interconnection agreements with Verizon are set to expire. New interconnection agreements will be needed. Verizon is insisting on its GRIPS arrangements for new agreements, threatening the ability of Cavalier and other CLECs to service customers in Delaware. Again, the question for the Commission is whether Verizon's insistence on its GRIPs position in new agreements is contrary to its checklist obligations in this Section 271 review. As the Delaware Hearing Examiner recommended, Verizon's continued insistence on this position threatens the further market opening efforts of CLECs. The FCC should refuse to sanction Verizon's GRIPs position, as applied in the Cavalier situation, and should deny this application to provide in region long distance service until Verizon agrees to compensate CLECs for the transport of traffic in the same manner that CLECs compensate Verizon for transport over Verizon's facilities in Delaware.

## **2. Background To The GRIPs Impasse In Delaware**

Beginning in 1997, Conectiv Communications, Inc., the predecessor-in-interest to Cavalier in this dispute, constructed a facilities-based network in Delaware by building out its network to interconnect and collocate with Verizon at numerous Verizon end offices in Delaware. Conectiv did this under an interconnection agreement then in existence. Once interconnected, Verizon requested that Conectiv install more than a hundred incoming one-way T-1 trunks to carry Verizon originated traffic from an originating end office wire center back to Conectiv's switch in Wilmington Delaware, and then for the further transport to a terminating end office wire center serving the intended recipient of the call, the Cavalier customer.

Once constructed for Verizon's benefit, Verizon placed its "Access Service Request (ASR)" orders for the direct transport of Verizon traffic over Conectiv's facilities to the Conectiv switch, and, accordingly, Conectiv billed Verizon for this network function in the same (reciprocal) manner that Verizon billed Conectiv when the situation was reversed (Conectiv ASR's for use of the Verizon network to transport Conectiv originated traffic to a Verizon customer). All was well for more than a year, as the parties exchanged there traffic for transport and termination in this reciprocal manner. Verizon was billed for the transport and termination services provided by Conectiv, and Verizon paid the bills, in full, without dispute.

Beginning in 2000, Verizon unilaterally began reducing its payments, ultimately terminating all payments entirely, while continuing to place ASRs for further transport

services over the Conectiv network.<sup>5</sup> Negotiations over this dispute occurred during the time that the parties entered into a new interconnection agreement in January of 2000, but the negotiations to solve this dispute went nowhere. In late 2001, Cavalier purchased the assets of Conectiv. After the purchase, Cavalier also attempted, to no avail, to negotiate a solution to this dispute.

Cavalier attempted to exercise its options to terminate the existing trunking arrangements, and to require Verizon to choose between the other available options to arrange for the transport of its traffic either through self-provisioning or purchase from another party. Instead, Verizon filed an emergency petition with the Delaware Public Service Commission, ironically calling Cavalier a “bully,” and leading to the Delaware PSC’s opening an investigation into whether further rules are needed to control the use of embargo by a LEC. At the same time, the Delaware PSC assigned the underlying interconnection dispute to a hearing officer for resolution. That forum is expected to finally resolve in due course the compensation issues for what’s been built already for end office connections and for the use of Cavalier’s *existing* transport trunks for use in “subtending” the existing Verizon tandem switch serving Delaware, located in Market Street, Philadelphia.

However, as a result of this dispute, there is no existing schedule in the current interconnection agreement that delineates the exact locations of relevant interconnection points for use by both of the parties (so-called Schedule 4). Moreover, there is no

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<sup>5</sup> Cavalier completely agrees with Hearing Examiner O’Brien’s critique of the propensity of Verizon to unilaterally change the course of conduct between the parties to the detriment of competition in Delaware even when there exists material disputes over the terms of reciprocal compensation. *Delaware Docket 02-001, Findings and Recommendations of the Hearing Examiner* at pp. 32-33. Cavalier’s dispute with Verizon is living proof of how Verizon leverages its monopoly position to the detriment of a small competitor trying to gain a foothold in a new market.

foundation, in contract or otherwise, to govern new network interconnection arrangements between Cavalier and Verizon in Delaware. The parties will be left to their respective interpretations of interconnection arrangements under the FCC's existing rules implementing the Act. And, while the Commission ruled that the Verizon interconnection situation in New Jersey passed muster (because there was a "choice" of interconnection alternatives available) in Delaware Cavalier is stuck with only one option to interconnect with Verizon, an option that the Commission has noted may have serious problems:

. . . certain contract language proposed by Verizon in interconnection negotiations and arbitration proceedings in New Jersey might raise potential compliance issues with our current rules governing reciprocal compensation if it were the only terms available to competing carriers in New Jersey . . .

New Jersey Order at para. 155. The contract terms that the Commission had reservations over in the New Jersey context are indeed the *only* terms available to Cavalier in Delaware to guide any present or future network interconnection needs of the companies. Verizon, as explained further below, is continuing to force Cavalier to interconnect for new trunking, despite the on-going dispute and despite the Commission's critique of its GRIPs provisions in the New Jersey 271 Order.

### **3. Verizon's GRIPS Interconnection Policy is Being Used To Further Deprive CLECS With Fair Interconnection Arrangements.**

Putting aside the current dispute pending with the Delaware PSC, any efforts to grow the networks out to handle current needs, or to enter into new agreements given that the current operating agreements are set to expire, are placed in complete stalemate. For example, as expressed in a June 25, 2001 Industry Letter, attached as Exhibit A, Verizon notified all CLECs that all carriers "requiring connectivity to the Verizon offices . . . must

connect to the new Wilmington tandem” located at Tatnall Street in Wilmington.

Verizon indicated that these network reconfigurations are necessitated so as to “provide relief” to the heavily used Market Street, Philadelphia tandem.

Once again, as with the original Conectiv interconnection arrangements in the late 1990’s, Verizon is requesting

that direct trunks between carriers and Verizon class 5 end offices, known as Type 2B trunks, be established to create a more robust, survivable network for carriers. Type 2B trunk groups would also reduce the strain on the Philadelphia LATA tandem network by routing traffic directly between class 5 switches and carriers.<sup>6</sup>

Verizon’s new “request,” in the context of the GRIPS position Verizon insists on in Delaware, once again begs the question of who is expected to pay for the transport of Verizon’s traffic over these new direct trunks connecting Verizon’s end offices that will benefit Verizon in “reducing the strain on the Philadelphia LATA tandem network?”

True to form, Verizon wants Cavalier to build out its facilities to provide these direct trunking needs for Verizon. In fact, as shown in the attached Declaration of James Vermeulen, attached as Exhibit “B,” in recent network planning meetings with Verizon, Verizon has told Cavalier that it expects that Cavalier will construct 240 (or ten DS1) inbound trunks for the benefit of Verizon’s incoming traffic to the Cavalier switch as part of this new interconnection arrangement. No doubt Verizon expects that Cavalier will construct direct one-way transport to accommodate Verizon’s needs. However, given Verizon’s oft-repeated positions, it will not be paying to use these facilities. And, Verizon has given Cavalier no assurances that it will in fact do so.

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<sup>6</sup> Exhibit “A.”

In fact, as the attached email (Exhibit “C”) from Verizon’s Manager Ken Rank to Cavalier’s Brett Cameron reveals, its recent efforts to get Cavalier to “confirm” that Cavalier will treat the Tatnall Street end office as the relevant “IP” can only be seen as part of a more widespread Verizon scheme to expand its GRIPs avoidance policies for this *new* network interconnection arrangement as well.

Again, this is not a hypothetical problem, or a dispute over past practices concerning an as-built network, but is exactly what Delaware Hearing Officer O’Brien feared in his critique of Verizon’s illegal practices—that Verizon will continue to press its monopoly leverage against CLECs to the disadvantage of its market opening obligations under the Act and in contravention to checklist item one under Section 271:

Nevertheless, the record contains troubling assertions, which were not denied, that Verizon-DE is seeking to expand the GRIPS provisions to other interconnection agreements through insistence upon them in negotiations. Verizon-DE’s insistence on provisions that undermine its interconnection obligations under the Act, I believe, would constitute a failure to meet the checklist’s interconnection requirements and would present a significant threat to keeping Verizon-DE’s local exchange service markets open. Causing CLECs needless delay and expense through insistence upon non-compliant interconnection agreement provisions threatens market openness and creates a substantial risk that CLECs will not receive what they are entitled to under the Act’s requirements.<sup>7</sup>

Hearing Officer O’Brien was right to be concerned, and to request that Verizon provide assurances to the Commission, and to all CLECs that

assure the Commission of its willingness to adhere to certain basic premises in its negotiation of interconnection agreements. Verizon-DE should accept the right of CLECs to determine points of interconnection; *i.e.*, it should allow a CLEC-chosen single point of interconnection per LATA. In addition, Verizon-DE should accept the cost responsibility for the transport of its traffic to that point as there should be no distinction between physical and “economic” points of interface or interconnection.<sup>8</sup>

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<sup>7</sup> Hearing Report and Recommendation at pg. 12

<sup>8</sup> *Id.*

However, instead of assurances, as requested, Verizon is instead charging full speed ahead to seek arrangements with Cavalier that are designed to further burden Cavalier with the costs and burdens of providing Verizon with free transport, as witnessed in the case of the network arrangements for the turning up of a new Verizon tandem in Delaware.

Again, Cavalier is not willing to provide free services to Verizon any more. What that means for Verizon's network migration plans to the new Tatnall Street tandem is anyone's guess. Will Verizon's existing Market Street tandem in Philadelphia fail to handle the current load? Will there be customers losing services? Will Verizon also refuse, in retaliation, to provision Cavalier's requests for use of Verizon's incoming trunks? These, and many more, are the kinds of network problems that will go unanswered as long as Verizon's GRIPs position is foisted on CLECs unchecked by this Commission.

#### **4. Verizon's GRIPs Policies Are Contrary To Its Responsibility Under the Act To Pay For The Transport of Its Traffic Over the Network Facilities Of Another Carrier.**

Verizon's position on GRIPs is contrary to the ILECs obligations under Section 251 of the Act to arrange for the physical linking of two networks for the mutual exchange of traffic and for the reciprocal compensation of the transport of each carriers traffic. As this Commission has long recognized, each carrier is responsible for its origination costs, its transport costs and the costs to terminate its calls served over the network of another carrier.

As pointed out above, in the case of Cavalier, the point where Verizon begins to use Cavalier's transport facilities is at the various Verizon end offices. Verizon is responsible for the origination costs and financial liability to get its traffic to that point. From there, since the traffic is riding over the Cavalier network, it is true that Cavalier will take the the *operational* responsibility to ensure that this traffic is taken to the designated end user (transport and termination). Cavalier expects, however, that Verizon will pay for the use of these facilities and will be *financially* responsible for the carrying of this Verizon originated traffic. However, Verizon's GRIPs position wrongfully seeks to avoid Verizon's *financial* responsibility for transport, by using the Cavalier network for Verizon's traffic needs, without paying for this network functionality.

Verizon's effort to shift financial responsibility for the further transport to the CLEC contravenes the fundamental reciprocal compensation obligations established under § 251(b)(5) of the Act and the Commission's rules and is thus at odds with the checklist items one and thirteen. As set forth in Section 251(b)(5),<sup>9</sup> and as implemented in the FCC rules,<sup>10</sup> reciprocal compensation deals with recovery for two portions of the completion of the call once Verizon hands off the traffic to the CLEC to carry over the facilities of the CLEC: the transport of the traffic (which is transmission and any necessary tandem switching from the POI to the terminating carrier's end office switch that directly serves the called party) and the local termination of the call (which involves the switching of the traffic at the terminating carrier's end office switch and delivery of

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<sup>9</sup> The reciprocal compensation obligations set forth in § 251(b)(5) of the Act requires carriers to provide for the mutual and reciprocal recovery by each carrier of the costs associated with transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. The charges that a CLEC imposes must reflect a "reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. § 252(d)(2)(A)(i)(ii).

<sup>10</sup> 47 CFR 51.701(c)(d).

that traffic to the called parties premises). The selection of the point where the ILEC decides to pass off its traffic (origination) to the CLEC (the POI) for the further transport and termination of the traffic will significantly affect the amount of reciprocal compensation the ILEC will be required to pay under the clear application of these rules.

The ILEC may decide to build its own transport to a CLEC's switch and pay for only the local termination portion of the traffic in reciprocal compensation rates (the cost from the end office to the called party). In that case, the ILEC has arranged for the transport of the traffic over its own fiber optic network. Conversely, if the ILEC would rather the CLEC build a network to the ILECs end offices and use the CLEC's network to transport the ILEC's calls back to the CLEC's switch (as is the case with the Cavalier/Verizon interconnection arrangement) it is only fair that Verizon pay for the use of Cavalier's network for this further transport.

What Verizon is doing in Delaware, as witnessed in the concrete example of its refusal to pay Cavalier for transport, is contrary to Section 251(b)(5) and contrary to the Commission's implementing rules at 47 C.F.R. § 51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network").<sup>11</sup> Moreover, as explained in the Commission's Local Competition Order, what Verizon seeks to do is directly contrary to the fundamental rule

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<sup>11</sup> This admonition was again repeated recently in the New Jersey 271 Order, but again appears to be a rule that Verizon has chosen to disregard in Delaware. See *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, FCC 02-189 at ft.n. 470 ("In general, our current reciprocal compensation rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination of local traffic that originates on the network facilities of such other carrier. 47 C.F.R. § 51.701").

that each party bears financial responsibility for the costs of transporting its own traffic (not the other way around, according to Verizon's self-serving definition of "interconnection point"):

The amount an interconnecting carrier [Verizon] pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier [Cavalier] provides one-way trunks that the inter-connecting carrier [Verizon] uses exclusively for sending terminating traffic to the providing carrier [Cavalier], then the inter-connecting carrier [Verizon] is to pay the providing carrier [Cavalier] a rate that recovers the full forward-looking economic cost of those trunks. The inter-connecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the inter-connecting carrier.<sup>12</sup>

The effect of this principle (originator pays for transport) and the illegality of Verizon's GRIP position defies the basic concept embodied in these rules that carriers are responsible to provide transport or pay for transport of their originating calls, including reciprocal compensation, between their own originating and the other carrier's terminating end-users customers. Verizon's application of its GRIP position, directed at Cavalier and competitors throughout Delaware, is simply a refusal to acknowledge that each carrier has an obligation to transport its own customers' calls to the destination end-user on another carrier's network or bear the cost of that transport.

Verizon's cost shifting position not only harms Cavalier's ability to compete and grow its network in Delaware but also undermines the ability of carriers to recover their

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<sup>12</sup> *Local Competition Order* at ¶ 1062 (emphasis and insertions added).

mutual costs of interconnection and the exchange of traffic over the interconnected networks.

Cavalier expects that Verizon will argue that this Commission has already dismissed Cavalier's position in both the Pennsylvania and New Jersey 271 Orders, and that there is nothing different in this case. Verizon is wrong. First, in Pennsylvania, the debate centered on the efforts by several IXC's to negotiate a single interconnection point located outside the local calling areas served by the customers, and the issue of who should pay for the transport of the Verizon traffic to that remote single interconnection point. As pointed out above, Cavalier has numerous interconnection points at numerous Verizon end offices where Cavalier is collocated with Verizon, at end offices within the local calling areas of the customers serviced out of these end offices.

This Commission has never ruled on whether Verizon's GRIPs position is a legal interpretation of its interconnection and reciprocal compensation obligations in this type of network arrangement. In fact, as noted above, in the New Jersey 271 Order the Commission expressed serious doubts that Verizon's GRIPs language would comport with the Commission's rules if it were the operative and only language at issue. In any event, this network arrangement is not the same network architecture that was sought by the IXCs in the Pennsylvania 271 case. Unlike in the Pennsylvania matter, Cavalier has built its network *out* to Verizon at numerous Verizon end offices, not the other way around where Verizon is asked to build to meet a CLEC at a distant single interconnection point outside the local calling area. Having induced Cavalier to build out

to Verizon's end offices Cavalier cannot fathom how Verizon can insist that it is entitled to a free ride back over Cavalier's network.<sup>13</sup>

Also, unlike in New Jersey, in Delaware Cavalier was able to present a more complete record, given a real case in controversy, and given the full benefit of the evidence and hearings. With the benefit of a more complete record, the Delaware Hearing Officer was extremely critical of Verizon's current position, as noted above. Thus, this matter, and the available record for review, is different than the debate in the Pennsylvania 271 proceeding upon which Verizon will rely.

### **5. Verizon Cannot Establish Track A Compliance**

As discussed above, Verizon's GRIPs position has forced a breakdown in interconnection with the only competitive UNE Loop provider in Delaware. In Verizon's public filings in this matter, Verizon relies on its interconnection agreement with Cavalier for its Track A showing. In fact, Cavalier is the *only* UNE loop provider that serves residential customers in Delaware that Verizon relies on. However, that interconnection arrangement is, as pointed out above, totally broken down as long as Verizon refuses to compensate Cavalier for the transport of its traffic over Cavalier facilities. Cavalier is not going to construct any inbound T-1's to help Verizon home its new tandem switch and end office trunking arrangements. Each month that goes on where Verizon is not paying Cavalier for this network functionality makes the survivability of Cavalier in Delaware more perilous by the month. Cavalier has been

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<sup>13</sup> Cavalier, too, believes that a CLEC is entitled to designate a single interconnection point, as pointed out by the Delaware Hearing Examiner, and that Verizon may not avoid transport obligations to that single interconnection point.

forced to scale back its sales activity significantly in Delaware, and only limited targeted efforts are underway. These efforts too are placed in jeopardy by Verizon's actions.

Hearing Examiner O'Brien also wisely forecasted the devastation that is caused when Verizon unilaterally declares that it will stop paying for services, even when it has paid in the past and knowing that the dispute is pending.

[A] unilateral change in the course of dealing between parties can cause significant to ruinous economic effects, especially in light of the time it takes the dispute resolution process to wend its way to completion. Perhaps there is no better example than reciprocal compensation, where a seemingly endless series of court and federal regulatory about-faces have made it virtually impossible for either RBOCs or CLECs to make rational plans about service offerings, estimations of future revenues, or any of the other material elements involved in committing resources.

Hearing Examiner Report at pg. 33. As a result, Hearing Examiner O'Brien recommended that the Commission compel Verizon to commit to a process of "managed change" designed to maintain the status quo while the dispute is worked out. *Id.* In the Cavalier context that would mean that Verizon would continue to do what it had done for more than a year—pay for the transport services ordered pending resolution.

When Verizon stopped paying, the "significant to ruinous economic effects" are made worse given the dearth of investors willing to provide any more investments in companies like Cavalier. In other words, Cavalier is a small business that took over a network constructed to meet the needs of carriers, including Verizon, and Cavalier had every reason to expect that this revenue stream would continue. Cavalier, as are most surviving businesses today, cannot rely on investor money from Wall Street anymore to grown their businesses. They must generate these revenues for their capital needs on their own.

Worse, given the current industry chaos going on, with the collapse of businesses by the day, there are no viable companies waiting in the wings to move into Delaware should Cavalier fail. Certainly not MCI/Worldcom with all its troubles, and that goes for the other IXC's as well. Right now Cavalier is the only game in town as a UNE Loop provider who has tried to interconnect with Verizon, and with Verizon's stonewalling of Cavalier, Cavalier is struggling to stay alive in Delaware. Evidently, Verizon seems content to bleed Cavalier dry while the dispute winds its way through the regulatory process.

Last, it must be pointed out that for most of the state of Delaware, particularly the central and southern portions of the state, neither Cavalier nor any other provider is willing to provide service. UNE prices in density cell 3 areas in most of the geographic part of Delaware are set at a point that is cost prohibitive for CLECs, and Cavalier is actively turning away customers who are requesting Cavalier as their alternative LEC in Delaware. For all these additional reasons, Verizon cannot succeed in relying on Cavalier for its Track A showing.

## **6. Conclusion**

Verizon has played a game in Delaware that has pushed Cavalier to the brink. Verizon has fostered discriminatory interconnection terms on Cavalier, and is continuing to press for arrangements that are at odds with the Act and the Commission's rules. Verizon's GRIPs position to withhold transport payments for transport over Cavalier's network facilities, while at the same time charging Cavalier for transport over Verizon's network facilities, represents a failure to provide nondiscriminatory interconnection and reciprocal compensation arrangements. The existing dispute over Cavalier's as-built

network is only the beginning of the threats to competition created by Verizon's GRIPs position. Verizon's on-going efforts to seek new interconnection arrangements to migrate traffic to a new tandem serving Delaware customers and to obtain even more free transport services from Cavalier proves that Verizon has no intent to comply with the interconnection and reciprocal obligations of the Act.

As a result, Cavalier's business in Delaware, as the only UNE loop provider servicing customers in Delaware, cannot grow under such a regime that is fundamentally hostile to the market opening provisions of the Telecom Act. As a result, Verizon's application for authority to provide in region interLATA services in Delaware should be denied.

Respectfully Submitted,



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Dated: July 17, 2002

